In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

THE CONSOLIDATED COAL COMPANY OF ST. LOUIS, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, *Defendant in Error.*	NO. 197. In Error to the Supreme Court of Illinois.

MAY IT PLEASE THE COURT:

The plaintiff in error very respectfully petitions the Court to grant a re-hearing of this cause.

The Court seems to have been impressed by the consideration that the record shows that the plaintiff in error does not appear to have suffered any injury. This is true, but it is conceived that the question whether or not a particular act is in contravention of the Constitution in that it measurably creates a government of men instead of a government of law, or provides that the property of the citizen may be taken without due process of law, is in no wise affected by the manner in which that law is administered. If the law is void it cannot be made valid by anything done in pursuance of its provisions. It is just as invalid when so executed as to favor a litigant, as it would be if it were executed so as to oppress him.

The Court says, in the last clause of its opinion:

"It is also true that the fees for each inspection shall not be less than six dollars nor more than ten dollars, and that such fees shall be regulated by the class of the mine, which shall be fixed by the inspector and depend upon the length of time consumed and the expense necessarily incurred in the inspection of such mine. Objection is made upon the ground that it gives to each mining inspector not only the right to determine the number of times each mine shall be inspected, but the fees to be charged in each case. If his discretion were unlimited in this direction, and the fees were retained by himself, there would be much force in the suggestion; but the truth is that the amount of the fee must be in each case somewhere between six dollars and ten dollars, and must be paid to the Secretary of the Bureau of Labor Statistics, and by him covered into the State treasury, to be held as a fund for the payment of the salaries of the mining inspectors. Each inspector provided for by the act receives for his services $1,800 per annum, to be paid quarterly out of the funds of the State treasury received for the inspection fees, and in the event of such fees being inadequate to compensate such inspectors in the amount provided for herein, the deficiency of the salaries shall be paid out of the money in the State treasury not otherwise appropriated. It appears, then, *first*, that the State inspector receives a regular salary, neither increased nor diminished by the number of inspections or the amount paid for each inspection; and, *second*, that he receives such salary directly from the Bureau of Labor Statistics and not from the fees paid to him therefor. As his compensation is dependent neither upon the number of his visits nor upon the amount of his fees, it is difficult to to see how he would gain by multiplying one or magnifying the other."

Does the fact that the discretion of the inspector is thus limited as to inspection fees really have any bearing upon the question under discussion? If it does, then it follows that the limit within which the discretion may be exercised, is alone to be considered in passing upon the validity of the act, and the question would be whether or not the limit is reasonable, or, pushed to its ultimate conclusion, whether the sum taken from the citizen without due process of law is great or small. If an unlimited discretion as to fees for and times of inspection vested in the inspector, would render the act invalid because, by its exercise, the citizen

would be deprived of his property without due process of law, or be denied the equal protection of the law, how would the limiting of that discretion avoid that result? And where is the limit to be? The maximum charge may as well have been twenty or fifty or one-hundred dollars, as ten, and there is no maximum fixed by law for the number of inspections. As to the number of inspections there is absolutely no limit, and in respect of that, the discretion of the inspector is wholly untrammeled. The fact that there is no limit to the number of inspections has the effect of removing the limit placed upon the fees. This fact seems to have been overlooked by the Court, as the opinion, as quoted, discusses only the discretion of the inspector as to fees to be charged and conceives it to be confined to a narrow range.

It is true that the salary of the inspector is fixed by law and that none of the inspection fees go to him and he would gain nothing by increasing the number of inspections or the amount of the fees to be charged, but to what degree does that fact affect the validity of the statute? One temptation to favor or disfavor particular mine owners is removed but many others remain. The fact cited by the Court, that the mines of this plaintiff in error have not been inspected as frequently as they ought to have been or as frequently as the law requires, is an example of the abuse of a discretion which ought not to be reposed in an administrative officer. But the question whether the discretion has been abused or not abused seems wholly foreign to that in issue. The question seems to be whether or not the law vests a discretion which is capable of being abused. If it does, it seems clear that it denies to the citizen the equal protection of the law.

But aside from that, the statute takes the property of the citizen without due process of law. Does it make any difference whether the great excess of fees over expenses, provided for by the law, are paid to the inspectors or into the State Treasury? Has the State any right to exact large sums of money from its citizens under the guise of inspection fees and turn that money into its treasury? The Supreme Court of Illinois, in the case of *The People v. Harper*, 97 Ill. 357, which involved a merely collateral inquiry as to the validity of an act providing for the inspection of grain, sustained the law, which provided that inspection charges should be "regulated in such a manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection *and no more.*" In that case the amount of the charges was not fixed by law as it is in this case. Here the total expense is ascertained and the minimum amount required to be raised under the law is almost twice as much as the expense, while the maximum which might be raised is left to the imagination alone. It is practicable, as was pointed out on the hearing, to raise by these inspections a fund of over $200,000 a year to meet a fixed charge of $12,600. A statute under which these results could be reached, does not seem to be one which avoids the complaint that it provides for the taking of the property of the citizen without any due process of law. Nor does the provision of the act to the effect that inspectors "shall not be guilty of any act tending to the injury of miners or operators of mines during their term of office" have any tendency to meet the objections made. It is apparent that this provision does not hinder inspectors in the perform-

ance of duties actually prescribed by the act itself. Who is to decide whether a given act of the inspector will injure the operator or the miners? Manifestly the inspector himself because the law names no acts which he may not commit. The validity of the act can only be determined by its definite provisions. It is not unconstitutional in one case and constitutional in another. The provision alluded to does not prevent the assessors from raising at least $21,772 to meet an expense of $12,600, which the law specially enjoins them to do, nor does it in any manner limit the exercise of the inspectors discretion as to the number of inspections that may be made. The Court would not say that the law is valid in one case because it thought the number of inspections not excessive, and invalid in another because it deemed the number of inspections unreasonable.

And even if the words quoted should be thought to have any legal effect whatever, the Court will observe that the law provides no remedy for any injurious act the inspector may commit, except his removal. There is no provision for righting, in any manner, any wrong he may do. If the act be held to say in effect, that the inspector must not, in enforcing the law wrongfully deprive any citizen of his property (although the law affords him the means of doing so), and if he does that thing he may be removed from office, this gives the citizen no remedy. The property so taken is turned over to the State. The punishment of the inspector will in no wise help the case of him whose money has been unlawfully exacted.

These considerations, thus briefly stated, are thought to

justify the plaintiff in error, in very respectfully moving the Court to grant a re-hearing of this cause.

CHARLES W. THOMAS,
Attorney for Plaintiff in error.

I, Charles W. Thomas, attorney for Plaintiff in error in the above entitled cause do hereby certify that in my opinion the above and foregoing petition is well founded and states good grounds for a rehearing of the said cause and that the same is made and filed therein in good faith.

Charles W. Thomas